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December 17, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie R. Salas, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: Written *Ex Parte* Statement of Intermedia Communications, Inc.

In the Matter of:

Bell Atlantic Application to)	CC Docket No. 99-295
Provide In-Region InterLATA)	
Services in New York)	

Dear Ms. Salas:

Pursuant to Section 1.1206(b)(1) of the Commission's Rules, Intermedia Communications Inc. ("Intermedia"), by its undersigned counsel, submits this written *ex parte* statement of Intermedia's position on the use of separate affiliates to ensure adequate deployment of unbundled loops and other network elements by Bell operating companies ("BOCs") after interLATA relief has been granted pursuant to Section 271 of the Communications Act. As noted below, Intermedia does not object to reliance on separate affiliates as a means of ensuring nondiscriminatory provisioning of unbundled network elements ("UNEs"). Intermedia's recent experience following the SBC/Ameritech merger, however, shows that the Commission must make clear that established services, such as frame relay access, which have been provided to CLECs under tariff (and relied upon by CLECs to provide service) continue to be made available, and not be cordoned off into a separate data affiliate.

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In light of a recent ex parte filing by Bell Atlantic in the instant proceeding,¹ it appears that Bell Atlantic is committing to establishing a separate affiliate through which it will provide advanced services, and is arguing that the establishment of such an affiliate will resolve many of the loop provisioning problems that have been reported by competitive carriers. Specifically, Bell Atlantic appears to be arguing that, because its "data affiliate" will have to obtain loops from Bell Atlantic on the same rates, terms and conditions that are made available to competitive carriers, this will eliminate any concern that Bell Atlantic is discriminating against CLECs by provisioning loops to itself more efficiently. While Intermedia applauds Bell Atlantic's efforts to ensure that its provisioning of *advanced services* is nondiscriminatory following the grant of Section 271 authority, Intermedia believes that it is just as critical for the Commission to implement performance requirements and self-executing penalties that ensure continued performance and compliance in its provision of all services. The Commission must adopt vigorous anti-backsliding rules and sanctions in order to ensure timely and effective provisioning of UNEs following a grant of interLATA relief.

I. Intermedia's Current Experience with SBC/Ameritech's Data Affiliate Demonstrate that the Commission's Affiliate Conditions Permit ILECs to Deny CLECs Access to Critical Network Elements

As part of the conditions that accompanied the Commission's approval of Ameritech's merger with SBC,² Ameritech established its existing subsidiary, Ameritech Advanced Data Services ("AADS") as an advanced services affiliate. In this capacity, AADS holds all advanced services equipment deployed in the Ameritech network, and provides all of Ameritech's advanced services, including Frame Relay Service.³ Because Intermedia maintains one of the three largest Frame Relay networks in the country, the impact of this data affiliate arrangement on Ameritech's Frame Relay service and network functions is particularly important to Intermedia. Prior to the establishment of AADS as Ameritech's data affiliate, both Ameritech

¹ See Public Notice, DA 99-2779, *Ex Parte Letter Filed In Connection With Bell Atlantic's Section 271 Application for New York*, CC Docket 99-295 (Dec. 10, 1999).

² *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corp., Transferor, to SBC Communications, Inc., Transferee*, CC Docket No. 98-141, FCC 99-279 (rel. Oct. 8, 1999).

³ Frame Relay is a packet-switched service that can offer broadband services to customer locations, and so is considered an "advanced" service. Frame Relay has been classified by the Commission as a basic telecommunications service. *Independent Data Communications Manufacturers Association, Inc. Petition for a Declaratory Ruling that AT&T's InterSpan Frame Relay Service is a Basic Service*, 10 FCC Rcd 13717 (1995).

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and AADS provided Frame Relay service – Ameritech through federal and state tariffs, and AADS by individual contract. Under these conditions, Intermedia negotiated or arbitrated interconnection agreements that provided for interconnection between the Intermedia and Ameritech Frame Relay networks. Intermedia also purchased Ameritech's Frame Relay service to expand its network as necessary to meet its customers' needs.

Currently, pursuant to the Merger Guidelines, Ameritech has eliminated its Frame Relay tariffed offerings, and AADS continues to provide Frame Relay on a contract basis. As a result, Intermedia must now purchase Frame Relay from AADS. This has had a profound – and adverse – impact on Intermedia's ability to provide Frame Relay service, as evidenced by the following:

- With the detariffing of Ameritech's Frame Relay service, the tariffed terms and conditions that formerly governed the service – including provisioning intervals and service quality standards – have been eliminated, and have not been replaced.
 - As a result, the standard deployment interval for Ameritech's Frame Relay Service has expanded from 12 business days (the formerly tariffed deployment interval) to 20 business days or more.
 - Intervals for repair of damaged circuits have been expanded, because AADS interjects a second layer of personnel.
 - When Intermedia obtained service from Ameritech, it reported circuit outages directly to Ameritech; now it must report them to AADS, which in turn reports them to Ameritech. This extra reporting layer has added significant delay in repair and maintenance intervals.
 - Service Level Agreements, which guaranteed specific performance levels under the Ameritech tariff, are now eliminated, and have not been replaced.
 - Liability waiver and assignment provisions formerly governed by tariff have not been re-established.
- AADS is not equipped to handle bulk orders for Frame Relay services, and is incapable of processing orders electronically. This has forced Intermedia to revert to manual order submission, and has resulted in substantial delay in obtaining Frame Relay Service, particularly for large orders.
- The tariffed rates available from Ameritech have now been replaced with contract negotiations with AADS – to date, no final or uniform prices have been established for AADS Frame Relay service.
- As Intermedia's Interconnection Agreements with Ameritech begin to expire, Ameritech now refuses to re-negotiate the Frame Relay interconnection agreements

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that it included in the initial agreements, arguing that Frame Relay is the exclusive province of AADS, and AADS is not obligated under §§ 251 and 252 of the Communications Act to interconnect with Intermedia.

- This position effectively denies Intermedia the ability to interconnect with critical pieces of the Ameritech high-capacity transport network that are used by AADS to provide Frame Relay service.
- This denies Intermedia access to the “Network-to-Network Interface” that Ameritech provided in the original Interconnection Agreement.
- For existing circuits that Intermedia takes from Ameritech, Ameritech has informed Intermedia that these must be transitioned to AADS, but has not informed Intermedia of the process by which such conversion will take place, or whether additional costs will be involved.
- Because AADS is not offering Frame Relay service via tariff, Intermedia has no way of knowing whether AADS is providing its retail customers with service superior to that it is providing to Intermedia.

All of these factors have substantially degraded the quality of Frame Relay service that Intermedia may obtain in the Ameritech states, and has denied Intermedia interconnection to Ameritech network elements and functionalities necessary to provision its own Frame Relay service. The Commission must ensure that tariffed services relied upon by competitive carriers remain under tariff.

II. The Commission Must Ensure that Competitive Carrier’s Access to Network Elements and Functions that Are Critical to the Delivery of Competitive Advanced Services Is Not Jeopardized By the Creation of a Separate Data Affiliate

The Commission must ensure that Bell Atlantic is not able to replicate the highly disruptive conditions that SBC/Ameritech has employed in purporting to comply with the Commission’s Merger Conditions. To this end, Intermedia urges that the Commission impose the following conditions on any “Data Affiliate” arrangement established by Bell Atlantic:

- Ensure that advanced services and interconnection arrangements currently made available to CLECs continue to be available.
 - Services such as Frame Relay, which have long-established service quality standards and a long history of reliability must not suffer service degradation when transitioned to an Affiliate.

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- ILECs must not be allowed to deny CLECs access to UNEs simply because they can be used to provide advanced services.
- DS1 loops used to provide Frame Relay are called "Frame Relay Access Lines." These must be made available to CLECs whether they are used for Frame Relay, high capacity Internet access, or "plain old telephone service."
- High capacity trunks used to connect Frame Relay switches are called "Network-to-Network Interfaces." ILECs must not be able to deny access to these UNEs – or the use of such transport pieces as part of an Interconnection Agreement – whether or not they are used to provide advanced services.
- Establishment of a data affiliate must not be allowed to circumvent an ILEC's obligations under the Commission's *UNE Remand Order*.
 - In that Order, the Commission ruled that ILECs must provide CLECs with access to packet switches (such as Digital Subscriber Line Access Multiplexers ["DSLAMs"] or other packet switching equipment) in cases where CLECs are unable to deploy their own data switches (such as when ILECs deploy DSLAMs in remote terminals).⁴
 - The Commission should ensure that an ILEC cannot evade this obligation simply by transferring its packet switching equipment to a data affiliate.

III. Even with Appropriate Conditions on the Separate Data Subsidiary, Vigorous Anti-Backsliding Rules Are Also Necessary to Ensure Compliance With Bell Atlantic's Obligations Under the Act

Finally, the Commission may not rely solely on the establishment of a separate data affiliate to ensure on-going BOC compliance with its obligations under the Act. As Intermedia has repeatedly advised the Commission, strong anti-backsliding rules must be adopted to ensure that BOCs will continue to provide adequate and nondiscriminatory service to CLECs after they have been granted interLATA relief pursuant to § 271. Intermedia supports the anti-backsliding initiative proposed by Allegiance Telecom, Inc. That proposal provides for graduated, but increasingly severe, sanctions if an ILEC demonstrates continued failure to provide timely and effective provisioning of UNEs and services. The Allegiance proposal has three steps:

⁴ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238 (released Nov. 5, 1999), at ¶ 313.

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1. Initiate the revenue penalties established by the New York Public Service Commission upon an initial showing of discriminatory or inferior service.
2. When continued nonperformance is reported, suspend the ILEC's ability to market its interLATA services to new customers until the defects are cured.
3. In the case of persistent inferior performance, impose monetary forfeitures.

These anti-backsliding provisions are critical to ensure that BOCs continue to meet the 14-point checklist even after they are granted interLATA relief.

IV. Conclusion

For the reasons discussed above, Intermedia urges the Commission to impose conditions consistent with the discussion contained herein on any data affiliate established by Bell Atlantic. Intermedia also urges the Commission to adopt the anti-backsliding program proposed by Allegiance Telecom.

Pursuant to Section 1.1206(b)(1) of the Commission's rules, Intermedia submits an original and a hard copy of this written *ex parte* presentation by hand delivery for inclusion in the

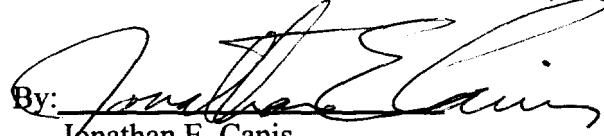
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public record of the above-referenced proceeding. Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

INTERMEDIA COMMUNICATIONS, INC.

By: 
Jonathan E. Canis
Its Counsel

cc: William E. Kennard, Chairman
Susan Ness, Commissioner
Harold Furchtgott-Roth, Commissioner
Michael K. Powell, Commissioner
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